

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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IVAN McKINNEY,

Plaintiff,

v.

GARY LANIGAN et al.,

Defendants.

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Civ. No. 18-8618 (FLW) (LHG)

**MEMORANDUM OPINION**

**FREDA L. WOLFSON, U.S.D.J.**

Plaintiff, Ivan McKinney (“McKinney” or “Plaintiff”), a state prisoner, filed *pro se* with the Court a complaint alleging claims under 42 U.S.C. § 1983 and, with it, an application to proceed *in forma pauperis*. (ECF Nos. 1 & 1-1.) The Court denied McKinney’s initial *in forma pauperis* application, under 28 U.S.C. § 1915(b), as the attached prison account statement was not certified by a prison official and did not cover the correct time period, i.e., the six months immediately preceding the filing of the complaint. (ECF Nos. 2–3.) McKinney has now submitted another *in forma pauperis* application that includes a certified prison account statement. (ECF No. 6.) As the account statement with the renewed application still does not indicate transactions from the correct period, it will again be denied without prejudice, and this case will be administratively terminated.

A prisoner who seeks to proceed *in forma pauperis* must submit an affidavit, including a statement of all assets, stating that the prisoner is unable to pay the applicable filing fee. *See* 28 U.S.C. § 1915(a)(1). The prisoner must also submit a certified copy of his inmate trust fund account statement for the six-month period immediately preceding the filing of his complaint.

*See id.* § 1915(a)(2). The prisoner must obtain this statement from the appropriate official of each prison at which he was or is confined. *See id.*

Even if a prisoner is granted *in forma pauperis* status, he must pay the full amount of the filing fee of \$350.00. *See* 28 U.S.C. § 1915(b)(1). In each month that the amount in the prisoner's account exceeds \$10.00, the agency having custody of the prisoner shall assess, deduct from the prisoner's account, and forward to the Clerk of the Court, payment equal to 20% of the preceding month's income credited to the prisoner's account. *See id.* § 1915(b)(2). The deductions will continue until the \$350.00 filing fee is paid.

Even if the necessary fees are paid and the complaint is accepted for filing, the Court may nevertheless immediately dismiss the case. The Court must review the complaint and dismiss it if it finds that the action (1) is frivolous or malicious, (2) fails to state a claim upon which relief may be granted, or (3) seeks monetary relief against a defendant who is immune from such relief. *See id.* § 1915(e)(2)(B); *see also id.* § 1915A(b).

If the plaintiff has, on three or more prior occasions while incarcerated, brought an action or appeal in a court that was dismissed on any of the grounds listed above, he cannot bring another action *in forma pauperis* unless he is in imminent danger of serious physical injury. *See id.* § 1915(g).

While the account statement included with McKinney's renewed *in forma pauperis* application appears to be properly certified by a prison official, it still does not cover the correct time period, and, accordingly, cannot be granted. The Court notes that it appears McKinney made a good-faith effort to comply with the requirements of § 1915. Unfortunately, however, it seems he was provided with a faulty prison trust account statement, in that the statement, generated on June 4, 2018, purportedly covers transactions occurring during the period of

“11/01/2018 – 05/01/2018.” (*See* ECF No. 6 at ECF pp. 3–5 (emphasis added).) Since the account statement was generated for a time period that had mostly not yet occurred, it lists no transactions, and merely indicates a balance of McKinney’s account. (*See id.*) Therefore, the application must be denied without prejudice. Accordingly, the Clerk of the Court will be ordered to administratively close the case. McKinney may reopen this action, however, by either paying the filing fee or submitting an *in forma pauperis* application that includes a certified trust account statement covering the six months preceding the filing of his complaint.

DATED: October 17<sup>th</sup>, 2018

/s/ Freda L. Wolfson  
FREDA L. WOLFSON  
United States District Judge